

INITIAL APPEARANCE FRCP 5

CALL CASE

On the record in the matter of **United States v. Tyson Sicily Atole;**

Cause No. **16-CR-289 MCA;**

Today is **February 3, 2016;**

This proceeding is being **digitally recorded.**

This **Initial Appearance** is being held in **Farmington, NM.**

B. Paul Briones,, United States Magistrate Judge presiding

The **time is** 10:42 a.m.

Representing U.S. Attorney for the District of NM: **Joseph Spindle-** via telephone

Interpreter N/A **(Swear In)**

RIGHTS

You are in court today for your initial appearance on criminal charges which have been filed against you. The purpose for this hearing is to make sure that you understand the charges against you, the penalties you face, and your rights in the criminal justice system.

- You have the right to remain silent today and every day throughout your proceedings. You do not have to make a statement and any statement you make could be used against you. If you begin to make a statement and change your mind, you may stop at any time. If you have already given a statement, you are not required to say anything further. 5d1E

☐ **Understand these rights?** Yes [**X**] / No [☐]

- You have the right to an attorney. If you can't afford to hire an attorney, one will be appointed to represent you free of charge. 5d1B
- ~~Right to a preliminary hearing [not for petty offenses or indictments]. At a preliminary hearing the government would have the burden of proving that probable cause exists to believe that you committed the crime for which you are charged. 5d1D~~
- You have the right to a detention hearing to determine whether there are conditions under which you can be released pending resolution of the charges against you. At this hearing, you can call witnesses on your behalf and cross examine any witnesses the prosecution calls. You can also submit arguments to the Court with regard to why you believe you should be released pending resolution of the charges against you. If you are detained, you also have the right to appeal that detention order. 5d1C
- **You have the right to a trial before a jury** [for misd see below]. If you elect to proceed to trial, you cannot be convicted of the charge(s) against you unless a jury unanimously finds beyond a reasonable doubt that you are guilty as charged.

[FOR MISDEMEANOR]: If you are charged with a Class A misdemeanor, or misdemeanor that carries a possible sentence of more than 6 months, you have the right to a trial before a jury. If you are charged with a misdemeanor in which the maximum term of imprisonment is 6 months or less, also known as petty misdemeanors, you have the right to a trial before a judge. Regardless of your maximum potential sentence, you have the right to trial, judgment and sentencing by a district judge. Although you may elect to proceed before a magistrate judge.] R58b2

- If you are a citizen of another country, you have the right to request that your country's consular representatives be advised of your detention and the charges against you. You may also request that your family be notified of your arrest and the charges against you. You may request this notification during these proceedings or at any time in the future.

Understand all of these rights? Yes [X] / No [__]

CHARGES AND MAXIMUM PENALTIES

You are before me today having been arrested on a Warrant issued **January 27, 2016** issued as a result of a Criminal Indictment entered **January 26, 2016**.

Have you been provided with a **copy of the charging document**? Yes [X] / No [__]

[Indictment: counsel, position on having charges read in open court]

You are charged with _____ *[Be sure to cover all counts]*

- ☐ **Count 1** charges a violation of **18 U.S.C. §113(a)(3)** *[Assault with a Dangerous Weapon]*; and
- ☐ **Count 2** charges a violation of **18 U.S.C. §113(a)(6)** *[Assault Resulting in Serious Bodily Injury]*; and
- ☐ It is alleged that these crimes were committed within Indian Country in violation of **§18 U.S.C. 1153**; and
- ☐ That the crimes were committed within the **jurisdiction of the New Mexico** Federal Court.

Do you understand the charges against you? Yes [X] / No [_____]

AUSA, what are the maximum *[and minimum]* **penalties?**

[Need incarceration, fine, supv'd release, & SPA]

Do you understand those maximum *[and minimum]* **penalties?** Yes [X] / No [__]

You should know that the United States may not yet be aware of information that could change those maximum *[and minimum]* **penalties. As a result, you should talk to your attorney about the penalties you might face, particularly in light of what your personal history might be.**

- **Any victims?** Yes [XX] / No [_____]
- If so, whether Government has notified the victim(s) (Crime Victims' Rights Act 18 U.S.C. §3771(a)(2) and (3). Yes [_____] / No [_____]
- **Court could also order you to pay restitution to the alleged victim(s) in this case.** *[For Victim cases; R58b2 requires this advisement for misd; 18 USC § 3556 is rest statute]*

APPOINTMENT OF COUNSEL *[IF NONE]*

I will appoint an attorney to represent you and that attorney will meet with you in the next few days.

- ☐ Immediately following this hearing, Pre-Trial Services will conduct an interview of you to ascertain financial information to help the Court determine whether you are eligible for a free court appointed attorney.
- ☐ Prior to speaking with Pre-Trial Services, you will be permitted to speak with an attorney who will advise you further about the nature of the interview and to help you determine whether to participate in the interview.

DETENTION

- United States has asked that you be detained and has **moved for a continuance of your detention hearing**. I am **granting that motion** and ordering that you be **remanded into the custody of the United States Marshal**.

- ☐ I am going to **schedule your detention hearing** for the **5th day of February, 2016** to occur before a U.S. Magistrate Judge at the Federal Court in Albuquerque, NM.
- ☐ Immediately following this hearing, Pre-Trial Services will conduct an **interview** of you in order to prepare a report to aid the Court in determining whether conditions of release can be fashioned for your release pending trial.
- ☐ Prior to speaking with Pre-Trial Services, you will be permitted to speak with a **Public Defender** who will advise you further about the nature of the interview and to help you determine whether to participate in the interview.

PRELIMINARY HEARING

~~- Advised whether the Defendant was entitled to a Preliminary Hearing. -~~

- ☐ ~~Yes if Charged with a Felony Complaint~~
- ☐ ~~No, if petty offense or Indictment.~~
- ☐ ~~I am going to **schedule a preliminary hearing** for the **day of** , **2016** to occur before a U.S. Magistrate Judge at the Federal Court in Albuquerque, NM.~~

MEDICATIONS, DRUGS OR ALCOHOL

- Inquired whether Defendant was on any prescribed medications or other drugs or alcohol at time of hearing affecting Defendant's ability to understand the proceedings.
 - o Yes [] / No [**X**]

Any questions?

NOTES: _____

Concluded the Initial Appearance. The time is 10:48 a.m.

Thank you. You are excused.